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In re application of:	Emmett M. Flynn	:	DECISION ON
Serial No.	10/028,666	:	PETITION
Filed:	December 28, 2001	:	
For:	DISPLAY PACKAGES FOR FRUITS OR	:	
	VEGETABLES	:	

This is a response to the PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR § 1.181 filed on July 11, 2005. The petition requests that the abandonment be withdrawn since the applicant did not receive the Notice of Non-Compliant Amendment mailed September 16, 2004.

DECISION

Since the petitioner asserts that the applicant did not receive the Non-Compliant Amendment mailed September 16, 2004, the request is accepted as a petition under 37 C.F.R. § 1.181 (no fee) and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

The evidence presented by the petitioner complies with the requirements set forth in MPEP § 711.03(c). The evidence presented is sufficient to establish that the Non-Compliant Amendment mailed September 16, 2004 was not received at the correspondence address. The evidence provided includes a statement by the petitioner that the Non-Compliant Amendment mailed September 16, 2004 was not received. Also provided is a copy of the application docket records where the Non-Compliant Amendment would have been posted had it been timely received. The instant petition also contains a statement attesting that a search of the file jacket was made, and the results of such a search revealed that the office communication was not received as is required by MPEP § 711.03(c).

Therefore any holding of abandonment for failure to timely file a proper response to the Non-Compliant Amendment mailed September 16, 2004 is hereby vacated, and the application is returned to pending status.

Note, that effective June 1, 2005, the office accepts amendments with the "previously amended" status identifier, and thus the notice of non-compliance is withdrawn. Thus, the application shall be forwarded to the examiner for consideration of the RCE filed September 3, 2004.

The Petition is GRANTED.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

BERESKIN AND PARR
40 KING STREET WEST
BOX 401
TORONTO ON M5H 3Y2 CA CANADA

caf